HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION No.14479 and 14485 of 2007

Date: 30.08.2007.

Between :
M/s. Binjrajka Steel Tubes Ltd.

.....Petitioner

And

The Superintendent of Central Excise,
Kothur-I and others.

.....Respondents.

HON'BLE SRI JUSTICE BILAL NAZKI
AND
HON'BLE SRI JUSTICE S.ANANDA REDDY

WRIT PETITION Nos.14479 and 14485 of 2007

COMMON ORDER : (Per Hon'ble Sri Justice Bilal Nazki)

Both the writ petitions are being disposed of by a common order.

We have heard the learned Counsel for the parties. Counter affidavit has also been filed.

The first writ petition is Writ Petition No. 14479 of 2004. Writ Petition No. 14479 of 2007 is filed seeking a Mandamus calling upon the respondents to refund an amount of Rs. 19,44,378/- which was claimed by the petitioner in his letters dated 24.1.2007 and 2.4.2007. Certain questions have been raised which relate to the interpretation of Section 2(B) of Section 11(A) of Central Excise Act, 1944 and the contention of the petitioner is that even if the amounts are paid voluntarily, in terms of Section 11(A) and 11(B), even then special order is expected to be passed by the respondents.

We have seen from the record, especially, from the letter written by the petitioner himself stating that after audit objections certain amounts were paid by him towards the department. There is nothing on record to show that the department coerced the petitioner to pay the said amounts. But the learned counsel for the petitioner submits that although there is nothing on record to show that he was coerced to pay the amount, he was persuaded in such a way that he had no option, but to deposit the amount. Had that been so, the petitioner could have come to the Court before depositing of such amount. These amounts have been deposited in the year 2005 and 2006. It appears that he also moved applications before the respondents seeking refund on various grounds including the ground that

no order had been passed with respect to the demand that was passed on the basis of the audit report. Now an order has been passed by the respondents declining any refund and for payment of interest of Rs. 13,25,695/-.

Since the amounts have been deposited almost two years before, there is nothing on record to show that these payments were not made voluntarily. Therefore, without going into the merits of the case, we feel that the writ petition can be disposed of by allowing the petitioner to move an application for refund in appropriate proforma and if such an application is made, the department shall decide the same within a period of two months. All the pleas which might be available to the petitioner may be raised by him in the application for refund.

The original letter was written by the petitioner for refund on 24.1.2007, which according to the learned counsel for the respondent was not in the requisite form. Therefore, the petitioner may file his application for refund in the requisite form. However, for the purpose of limitation, the filing of the application be taken as 24.1.2007.

Any observations made by us in this order are only made for the disposal of the present writ petition and the respondents may not take our observations as our opinion on the issue in controversy.

Coming to the second writ petition, namely, Writ Petition No. 14485 of 2007, which is against levy of interest, we are told that the order is appealable. However, Mr. S. Ravi, learned counsel contended that the notice dated 20.2.2007 is couched in such a language that it was not taken to be an order of interest. Therefore, no appeal was filed. Since the learned counsel for the Department has contended that the notice is actually a demand for interest, therefore, he should be given sometime to file an appeal.

Accordingly, the writ petition is disposed of permitting the petitioner to file an appeal within a period of two weeks from today. In peculiar circumstances of the case, we direct that the interest shall not be

recovered till the application for refund is decided by the respondents or till appropriate orders are passed by the appellate authority before whom the application against levy of interest is filed.

The writ petitions are accordingly disposed of. No costs.

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BILAL NAZKI, J

Date: 30th August, 2007

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S. ANANDA REDDY, J

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